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Nos. 298, 299

In the Supreme Court of the United States

OCTOBER TERM, 1957

ERIC G. KAUFMAN, ET AL., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ERNEST ATTENHOFER, ET AL., PETITIONERS

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The rulings of the District Court of March 13 and 14, 1957 (R. 263–265, 269), have not been reported. The opinion of the Court of Appeals (R. 278–283) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 20, 1957. (R. 284.) The petitions for writs of certiorari were filed July 19, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Petitioners are minority stockholders in a Swiss holding company who were permitted by *Kaufman* v. *Societe Internationale,* 343 U. S. 156, to intervene in the corporation's suit for return of vested property to assert their rights "to an interest in the assets proportionate to their stock holdings." The trial court found that petitioners' proportionate share could not exceed 25% of the vested assets.

The question is whether the trial court abused its discretion in denying petitioners' motions for an injunction restraining the Attorney General from offering for sale 75% of the vested assets, the remaining 25% to be reserved to satisfy fully petitioners' claims.

STATUTES INVOLVED

The pertinent provisions of the Trading with the Enemy Act are set out in the Appendix, *infra,* pp. 17–20.

STATEMENT

These are petitions for writs of certiorari to review a judgment of the Court of Appeals affirming orders of the District Court denying petitioners' motions for an injunction to restrain the Attorney General, as successor to the Alien Property Custodian, from sellin-

certain stock in General Aniline & Film Corporation, a Delaware corporation (GAF).

In October 1948, Societe Internationale pour Participations Industrielles et Commerciales S. A., a Swiss corporation also known as I. G. Chemie or Interhandel, brought suit in the District Court for the District of Columbia to recover some 93% of the stock of GAF, vested under the Trading with the Enemy Act (40 Stat. 411, as amended, 50 U. S. C. App. Sec. 1, *et seq.*). Petitioners are two groups of stockholders holding 41,683 out of 250,000 common shares of I. G. Chemie who intervened pursuant to this Court's decision in *Kaufman* v. *Societe Internationale*, 343 U. S. 156.

Intervention was first sought in 1950 when Eric G. Kaufman, alleging himself to be a nonenemy stockholder in I. G. Chemie, filed a motion for leave to intervene in the corporate action on his own behalf and on behalf of all other nonenemy stockholders of plaintiff I. G. Chemie. (R. 2.) Kaufman based his plea for intervention on the charge that the enemy-dominated management of I. G. Chemie was about to settle its corporate claim with the Government for an amount less than the value of the nonenemy interests in the assets. Such a settlement, Kaufman alleged, would deprive nonenemy stockholders of part of their property. 343 U. S. at 160–161.[1] The District Court

[1] While Kaufman's proposed complaint prayed for return of a portion of the vested GAF stock, his counsel, in the course of the proceedings on the motion to intervene, proffered a written stipulation permitting respondents to sell the GAF stock at any time, the proceeds to take the place of the stock in litigation. (R. 184.)

denied the motion, 90 F. Supp. 1011, and the Court of Appeals affirmed. 188 F. 2d 1017. This Court reversed, holding that the intervention should be permitted to protect "the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings." *Kaufman* v. *Societe Internationale, supra,* at 159–160.

On June 16, 1952, petitioner Ernest Attenhofer, acting for himself and a group of other Chemie stockholders,[2] moved to intervene independently of Kaufman, alleging that the right recognized by the decision in *Kaufman, supra,* was an individual right of each stockholder. (R. 27–32, 63–64, 85–93, 102–103.) Attenhofer's motion was granted over the objection of Kaufman. Kaufman's motion to this Court for leave to file a petition for a writ of mandamus against the District Judge to prevent the intervention was denied. *Kaufman* v. *Pine,* 344 U. S. 891.

In February 1953, the District Court ruled that I. G. Chemie's complaint would be dismissed unless, within a specified time, Chemie complied with a 1949 discovery order. *Societe Internationale, etc.* v. *McGranery,* 111 F. Supp. 435. In November 1953, the District Court found that Chemie had not complied and that the complaint therefore would be dismissed.

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[2] The Attenhofer group consists of minority stockholders in I. G. Chemie who are represented by a stockholders' committee organized by the corporation. Membership in the Attenhofer group is without any cost to the stockholders; the corporation bears all fees and costs of the litigation. (R. 30–31, 35, 67, 90–91, 125–126.)

The order of dismissal, entered on December 21, 1953, provided that it shall be inapplicable to the claims of the petitioners. *Société Internationale, etc.* v. *Brownell,* 15 F. R. D. 83. (R. 271–272.) The dismissal was affirmed by the Court of Appeals which, however, granted an additional six months' period of grace for compliance. 225 F. 2d 532. A petition for rehearing *en banc* was denied on September 1, 1955. Certiorari was denied. 350 U. S. 937.[3]

On July 21, 1953, the special master,[4] stating that he was acting "in the exercise of the 'equitable power and procedural flexibility' referred to in the said decision of the Supreme Court," entered a bar date order directing the individual stockholders of I. G. Chemie to intervene before January 1, 1954, or be barred from benefitting from any judgment in this action with respect to rights or interests of nonenemy stockholders. (R. 119–120.) The master found that "this case can be brought to a conclusion within a reasonable period of time and in an orderly fashion only if such allegedly nonenemy stockholders" intervene or be barred. (R. 119.) "Only by making the individual claimants parties can there be a complete disposition of the present controversy." (R. 114.)

On December 16, 1953, the District Court affirmed the master's bar date order. The stockholders were

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[3] On April 11, 1957, the Court of Appeals affirmed orders of the District Court denying I. G. Chemie's motions to further extend the time for production and to vacate the order entered upon the mandate of the Court of Appeals. 243 F. 2d. 254. Petition for rehearing *en banc* was denied May 10, 1957.

[4] By order of the District Court, the case had been referred to a special master in 1950.

given an additional three months to intervene, until March 31, 1954. (R. 123–124, 141–142.) Pursuant to the publication of the bar date order here and abroad, as decreed by the court, 2,488 stockholders did intervene. (R. 142, 206–208, 225.)[5]

On February 21, 1957, the Attorney General offered for sale 75% of the vested GAF stock, the remaining 25% to be reserved to satisfy the claims of the intervening stockholders. Petitioners' motions for an injunction restraining the sale were denied by the District Court for the reason that petitioners' "rights are limited by the *Kaufman* decision to an interest in the assets proportionate to their stock holdings." (R. 264.) Finding that the intervening stockholders owned only 15% of I. G. Chemie's capital stock (R. 273–274), the court ruled that their maximum recovery "cannot exceed 15 percent of this Interhandel claimed GAF stock." Because the Attorney General proposed to sell only 75% of the Chemie-claimed GAF stock, "an interest in which under no circumstances could be claimed by the plaintiff intervenors," the court held that the Attorney General's authority to sell could not be questioned. (R. 264.) On a motion for rehearing, petitioners argued for other meth-

[5] For several years prior to the bar date, Schoop, Reiff & Co., a Swiss banking firm, which serves as a protective committee for stockholders in the Kaufman group (petitioners in No. 298), had been soliciting stockholders for authorization to act in their behalf. (R. 33–35, 38–44, 124–126.) Since the *Kaufman* decision, the Attenhofer committee (petitioners in No. 299), which has access to the lists of Chemie's stockholders, has also been soliciting stockholders to join that committee. (R. 30–31, 124–126.)

ods of computation which would enhance the percentage value of their 41,683 shares from 15% to over 37% of the outstanding Chemie stock, but the court reaffirmed its finding that petitioners' interest in I. G. Chemie "is below 25 percent." (R. 269.)

On review in the Court of Appeals, the judgment of the District Court was unanimously affirmed. (R. 278–283.) Relying upon *Kaufman* v. *Societe Internationale, supra,* the Court of Appeals found that each nonenemy stockholder has a "severable interest in corporate assets seized by the Custodian * * *. (R. 282–283.) It concluded that, under Section 9 (a) of the Trading with the Enemy Act (Appendix, *infra,* p. 19), the nonenemy stockholder may recover, not the interest of some other person, but only the interest to which the stockholder himself is found to be entitled. The court therefore held that petitioners may recover only their own proportionate interest in the assets and are not entitled under Section 9 (a) to enjoin the sale of assets exceeding that proportion. Finally, the court ruled that there was no error or abuse of discretion in the finding that petitioners' interests did not exceed 25% of the vested assets and, indeed, that their interests amounted to only 15.439% of the total outstanding stock of I. G. Chemie. (R. 283.)

ARGUMENT

1. The decision below is fully in accord with *Kaufman* v. *Societe Internationale, supra.* There this Court stated: "Our holding is that when the Government seizes assets of a corporation organized under

the laws of a neutral country, the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings must be fully protected." 343 U. S. 156, 159–160. The Attorney General is proposing to sell only 75% of the vested GAF stock.[6] Since he will retain 25% to satisfy all possible claims of petitioners, who own only 15.439% of the I. G. Chemie stock, the courts below correctly concluded that petitioners are not entitled to an injunction.

The gist of petitioners' argument is that the 25% retained by the Attorney General might prove insufficient to protect the interests of absent and unidentified stockholders—*i. e.*, stockholders who, despite notice, have failed to appear in the action. Thus, the Kaufman petitioners contend, because their complaint contained a derivative theory of recovery, that this Court adopted that theory when it approved the filing of the Kaufman complaint in *Kaufman* v. *Societe Internationale*. But, even assuming *arguendo* that a derivative theory had been approved, it certainly would not follow that the intervening stockholders are entitled to an injunction for the benefit of nonappearing stockholders.[7] The only rights petitioners

[6] Due to the final dismissal of plaintiff I. G. Chemie, the vested assets in excess of petitioners' interests are free from the injunctive provision of Section 9 (a) of the Trading with the Enemy Act and are subject rather to Section 5 (b) of the Act (Appendix, *infra*, p. 17), in which the Attorney General is given full power to administer, sell, and liquidate vested property.

[7] Indeed, the District Court specifically stated (R. 264): "Defendant is therefore proposing to sell stock, an interest in

can invoke are personal rights—not the rights of unidentified third parties. See, *e. g., Tyler* v. *Judges of Court of Registration,* 179 U. S. 405, 406–407. In any event, there is no basis for assuming that this Court adopted a derivative theory of recovery in *Kaufman* v. *Societe Internationale.* On the contrary, as the opinion makes abundantly clear, the Court disapproved that theory and decreed that the right of recovery is of an individual nature.

After stating its holding that innocent stockholders have an interest "proportionate to their stock holdings," the Court added (343 U. S. at 160):

> This holding is not based on any technical concept of derivative rights appropriate to the law of corporations. It is based on the Act which enables one not an enemy as defined in Sec. 2 to recover any interest, right or title which he has in the property vested.

In like vein, the Court later summarized its decision as "holding that Congress has recognized that nonenemy stockholders of nonenemy foreign corporations have a severable interest in corporate assets seized by the Custodian * * *" (p. 161). Any possible doubt as to the holding is dispelled by the following passage in the opinion (p. 161):

> Petitioners claim a proportional right or interest in the specific assets of Interhandel and that they may not be driven to accept their

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which under no circumstances could be claimed by the plaintiff intervenors, and I reach this conclusion as to his right to sell on either the individual theory or the derivative theory."

> share of whatever price the Government may happen to get from a sale of these valuable assets. In order to play safe, petitioners have filed a separate suit in a Federal District Court. But we think the questions involved in disputes like this can be more appropriately resolved in the corporate actions authorized by Sec. 9 (a) than by resort to a multiplicity of separate actions. *In such suits the nonenemy stockholder in his own right may assert his nonenemy character in order to protect his own interest from the enemy taint caused by other stockholders.* Courts trying such corporate actions have adequate equitable power and procedural flexibility to protect all interests, even when the corporate recovery is not for the benefit of all stockholders but only for those who are nonenemies. [Emphasis added.]

The italicized sentence (omitted by the Kaufman petitioners, p. 12, in quoting this passage) further emphasizes that the stockholder's interest is a personal one and that it must be invoked "in his own right."[8]

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[8] The petitioners rely on the Court's use of the phrases "corporate actions" and "corporate recovery" in the above-quoted passage (Kaufman Pet. 12; see also Attenhofer Pet. 8). But these phrases, when read in context as they must be, afford no basis for petitioners' argument that they are entitled to invoke the interests of absent stockholders. The phrase "corporate actions" was quite plainly used only for the purpose of identifying suits (like this one) brought by corporations (*e. g.*, Chemie) to recover their assets; this Court held that nonenemy stockholders of such corporations could intervene in such "corporate actions." Similarly, the phrase "corporate recovery" was used to refer to the amount awarded in such suits, even though the recovery is "not for the benefit of all stockholders but only for those who are nonenemies."

Moreover, under the very terms of the Trading with the Enemy Act, the rights of recovery of petitioners cannot be measured by the interests of absent persons. The nonenemy stockholder of a neutral corporation can have a recovery ~~but he~~ must be "not an enemy" and pursuant to Section 9 (a) he can recover only "the interest * * * to which * * * said claimant is entitled." The necessary proof of nonenemy status is so personal as to require the conclusion that, no matter in whose suit or on whose behalf the right is asserted, the right is a personal one. There cannot be any recovery for other persons. As the Court of Appeals stated, when a claimant's interest has been established, the court under Section 9 (a) shall order the payment of the property or interest therein to which the claimant is entitled, "not the property or interest therein of some *other* claimant, or even of all claimants similarly situated, but of that to which *'said claimant'* is entitled." (R. 283.)[9]

[9] Petitioners' description (Kaufman Pet. 5, 12) of the rulings on respondents' motion under the Anti-Assignment Act (31 U. S. C. 203) to dismiss the complaints of intervening stockholders who purchased their Chemie shares after vesting is inaccurate. The special master denied the motion on the ground, *inter alia*, that there had been no assignment of the derivative corporate claim. (R. 149.) The Kaufman petitioners fail to state that, in confirming the order of the special master, the District Court emphasized that it did not thereby adopt the master's opinion or reasoning *in toto*. (R. 161.) Moreover, the issue of the Anti-Assignment Act is not now in question. What is involved here is whether there can be any recovery for the benefit of absent stockholders; and on that issue the master, like the District Court, ruled that stockholders who failed to intervene should be barred from recovery in the action. (R. 120, 123.)

2. Even assuming *arguendo* that petitioners could invoke the rights of absent stockholders prior to the bar date, they cannot do so after that date.

The special master found that the case could be brought to a conclusion "within a reasonable period of time and in an orderly fashion" only if there would be interventions "within a prescribed period of time." Without the bar date order, "confusion and disorder" would ensue in the litigation of the case. (R. 119, 123.) Sitting as a court of equity under Section 9 (a) of the Trading with the Enemy Act, the District Court could validly issue such an order in the interest of the orderly administration of justice.

Although not questioning the court's power in this regard or the sufficiency of the notice to the stockholders, petitioners attack the order as "so premature as to border on the fantastic" and as "grossly untimely and premature as a matter of law." (Attenhofer Pet. 11, 13.)[10] But when the order was first made by the special master in July 1953, the proceedings for dismissal of I. G. Chemie's complaint had been pending for years. See 225 F. 2d 532, 533–534. And the order was affirmed one month after the court had

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[10] The Kaufman petitioners (Pet. 14, n. 4) contend that the order is inconsistent with the alleged corporate nature of petitioners' suit. See *supra*, pp. 7–11. But even in such suits stockholders have been barred for reasons such as failure to join, laches, etc. *Bailey* v. *Jacobs*, 325 Pa. 187, 189 Atl. 320; *Matthews* v. *Headley Chocolate Co.*, 130 Md. 523, 100 Atl. 645; *Young* v. *Columbia Oil Co.*, 110 W. Va. 364, 158 S. E. 678. See also *Perlman* v. *Feldmann*, 219 F. 2d 173 (C. A. 2), certiorari denied, 349 U. S. 952; and other cases collected in Note, *Individual Pro Rata Recovery in Stockholders' Derivative Suits*, 69 Harv. L. Rev. 1314.

ruled finally that the complaint would be dismissed. See *supra*, pp. 4–5. Without the bar date order, years of complete inactivity on the claims of the intervening stockholders would necessarily have followed the dismissal of the complaint. Pretrial discovery would have been impossible. Petitioners Kaufman and Attenhofer had refused to divulge even the names of their fellow allegedly nonenemy stockholders. (R. 99.) On the other hand, after the bar date, it became possible, by means of interrogatories, to develop the essential facts concerning the personal status of the intervening stockholders and their title to the Chemie shares. (R. 225–226.)

As noted, no claim is, or can be, made that the bar date order did not allow sufficient time or that the stockholders were not given adequate notice. Respondents published the order in Swiss and domestic newspapers, as directed by the court (R. 115, 120–121, 124, 142); both petitioner groups advertised for adherents; and the Attenhofer group circularized all present stockholders on the postwar stockholders' list of I. G. Chemie, offering them representation without cost. (R. 30–31, 33, 35, 38–44, 90–91, 125–126.) As a result, whereas Kaufman and Attenhofer originally had sued for 744 stockholders, a total of 2,488 intervened before the bar date. (R. 225.) Not a single stockholder moved to challenge the order during the three years' period from the bar date (March 31, 1954) to the date

the District Court denied petitioners' motions for an injunction (March 15, 1957).[11]

Contrary to the assertion by the Attenhofer petitioners (Pet. 15), requiring stockholders of neutral corporations to intervene individually in corporate actions will not "impose an enormous and an unnecessary burden on our already congested federal trial courts." Intervention of the 2,488 stockholders was accomplished in the instant case without any burden on the trial court simply by the expedient of one single complaint for each of the intervening groups. Moreover, the issue here presented is not of general application. Not a single action of any corporation is pending in the courts where any group of stockholders has claimed, or can be expected to claim, rights under the *Kaufman* decision.

3. As already pointed out (*supra*, p. 7), in holding that the Attorney General's retention of 25% of the Chemie stock amply safeguarded petitioners' maximum interest, the courts below found that petitioners' shares represent only 15.439% of the Chemie capitalization. The Attenhofer petitioners (Pet. 16–

[11] Not until the eve of the oral argument before the Court of Appeals (on May 20, 1957) was the first attempt made to challenge the bar date, the Attenhofer petitioners then filing a motion for leave to intervene on behalf of five stockholders owning 450 shares. Only two additional shareholders claiming 340 shares have since filed motions. These facts refute the bland assertion of the Kaufman petitioners that the innocent holders of thousands of shares were deprived of rights and that the "innocent holders of the balance of the approximately 112,000 common shares outstanding in the hands of a scattered public are left without protection." (Pet. 14.) And see *infra*, p. 16.

18) urge that the 41,683 I. G. Chemie shares claimed by the petitioners represent more than 25% of the Chemie capitalization, perhaps 31.5% or 33.7%. They argue that the proportionate interest of the intervenor-stockholders in the vested assets should be determined, not on the basis of Chemie's capitalization at the time of vesting, but on the basis of whatever the capitalization might be on the date of final adjudication of the litigation.

It is settled, however, that under Section 9 (a) of the Trading with the Enemy Act there can only be a return to the nonenemy of the interest, right, or title which he has in the property at the time of vesting. *Von Zedtwitz* v. *Sutherland,* 26 F. 2d 525 (C. A. D. C.); *Koehler* v. *Clark,* 170 F. 2d 779 (C. A. 9); *Kaname Fujino* v. *Clark.* 71 F. Supp. 1 (D. Haw.), aff'd 172 F. 2d 384 (C. A. 9), certiorari denied, 337 U. S. 937, rehearing denied, 338 U. S. 839; *Sturchler* v. *Sutherland,* 19 F. 2d 999 (E. D. N. Y.). The cause of action of the innocent stockholders of I. G. Chemie arose at the time of vesting and the stockholders' percentage at that time is the percentage which governs.[12]

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[12] And, contrary to the assertions by the Attenhofer petitioners that the preferred shares should be disregarded, the District Court properly assigned a value to the outstanding preferred shares of I. G. Chemie, predicating the value on the par value of the preferred stock. (R. 273-274.) No substantial arguments have been advanced by the petitioners against that evaluation. Both courts below have agreed on the computation of petitioners' interests, and we believe that there is no reason for departing from the ordinary two-court rule. See *Comstock* v. *Group of Institutional Investors,* 335 U. S. 211, 214; *United States* v. *State Investment Co.,* 264 U. S. 206, 211; *Cornell University* v. *Fiske,* 136 U. S. 152, 176.

4. In any event, the absent stockholders—contrary to petitioners' suggestion—are not without a remedy. As the District Court (R. 261) pointed out, if for some sound reason an absent stockholder should appear and successfully challenge the bar date, his remedy will be against the proceeds of the sale of the assets.[13] The availability of this remedy further confirms the appropriateness of the District Court's exercise of equitable discretion in denying injunctive relief.

CONCLUSION

Since petitioners' stock interest is fully protected, they should not be permitted to block the proposed sale. The decision below upholding the denial of injunctive relief is clearly correct; there is no conflict of decisions; and no other reason appears which would warrant further review. Accordingly it is respectfully submitted that the petitions for writs of certiorari should be denied.

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[13] The constitutionality of this remedy has been upheld. *Becker Co.* v. *Cummings*, 296 U. S. 74, 79; *Ecker* v. *Atlantic Refining Co.*, 222 F. 2d 618, 622 (C. A. 4, 1955), certiorari denied, 350 U. S. 847; see *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239.

APPENDIX

THE TRADING WITH THE ENEMY ACT, 40 STAT. 411, AS AMENDED, 50 U. S. C. APP. SEC. 1, *et seq.*

* * * * * *

SECTION 5

SUSPENSION OF PROVISIONS RELATING TO ALLY OF ENEMY; REGULATION OF TRANSACTION IN FOREIGN EXCHANGE OF GOLD OR SILVER

* * * * * *

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

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SECTION 9

CLAIMS TO PROPERTY TRANSFERRED TO CUSTODIAN; NOTICE OF CLAIM; FILING; RETURN OF PROPERTY; SUITS TO RECOVER

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute

a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act [sections 1–6 and 7–39 of this Appendix] and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

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